

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY ERVIN,

Plaintiff,

No. CIV-S-05-0269 LKK GGH PS

vs.

JUDICIAL COUNCIL OF  
CALIFORNIA, et al.,

Defendant.

ORDER

On May 13, 2005, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within ten days. Plaintiff filed objections on May 26, 2005.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are

1 reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir.  
2 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,  
4 concludes that it is appropriate to adopt the Proposed Findings and Recommendations in part.<sup>1</sup>

5 Accordingly, IT IS ORDERED that:

6 1. The Proposed Findings and Recommendations filed May 13, 2005, are  
7 ADOPTED in part;

8 2. Defendant State Bar's motion to dismiss, filed February 28, 2005, is denied as  
9 moot;

10 3. Plaintiff's request for entry of default, filed March 9, 2005, is denied;

11 4. Motion to dismiss by defendants Judicial Council, Superior Court -  
12 Sacramento Court, Virga, Cecil, McMaster, and Castellanos, filed March 15, 2005, is granted;  
13 and

14 5. Plaintiff is granted leave to amend against the public entities on the remote  
15 chance he will be able to state a claim against them. Plaintiff shall file an amended complaint  
16 within thirty days of this order.

17 DATED: August 15, 2005.

18 /s/Lawrence K. Karlton  
19 LAWRENCE K. KARLTON  
20 SENIOR JUDGE  
21 UNITED STATES DISTRICT COURT

22 ervin269.jo  
23  
24  
25

---

26 <sup>1</sup> On May 23, 2005, plaintiff filed a request for dismissal of the State Bar to which the State Bar had no objection. A separate order dismissing that defendant has been filed.